



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 11-02490
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2011

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 9, 2009. On July 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On August 13, 2011, Applicant answered the

SOR and elected to have her case decided on the written record in lieu of a hearing. On October 11, 2011, Department Counsel submitted the file of relevant material (FORM) that contained Items 1 through 9. A copy of the FORM was forwarded to Applicant on October 12, 2011. She was given 30 days from the date she received the FORM to submit any objections and information in mitigation or extenuation. Within the allotted time period, she submitted additional information that was marked as Item 10. Department Counsel had no objection to the additional information. The case was assigned to me on November 29, 2011. Items 1 through 10 are entered into the record.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. She has worked for her current employer since June 2009. Information contained in the FORM indicates that she graduated from high school in September 1977 and obtained an associate's degree in January 1985. She married in March 1994 and has two children, ages 16 and 33 years old. She has not served in the U.S. military. In 1983, her background was investigated for a security clearance.¹

The SOR lists three delinquent debts totaling \$21,486. In her Answer to the SOR, Applicant admitted each of the alleged debts with explanations. Her admissions are incorporated herein as findings of fact.²

Applicant attributes the delinquent debts to medical problems and a period of unemployment. In late 2006, she underwent surgery for a brain tumor. As a result of that operation, she suffered blood clots that resulted in two additional surgeries. She was forced to take a long-term leave of absence. During that absence, she initially received full pay under an insurance policy, but those payments decreased and eventually expired. The date her insurance payments terminated is unknown. Following her surgeries, her husband also started working part time so that he could care for her. While on the leave of absence, her section at work underwent a reduction in force and she was laid off. As a result of their reduced income, she and her husband were unable to meet their financial obligations. Her e-QIP reflected that she was unemployed from December 2006 to September 2008. Since returning to work, she has been employed in two jobs. The first job ended when she was laid off in May 2009. Shortly thereafter, she began working for her current employer. Her husband was unable to secure full-time work until December 2009.³

¹ Item 5. Regarding her associate's degree, Applicant's e-QIP indicates she attended college from January 1985 to February 1990. Consequently, her associate's degree may have been awarded in February 1990.

² Items 1 and 4.

³ Items 5 and 6 at 9.

The alleged debts are as follows:

SOR ¶ 1.a – collection account of \$5,977. This is a charge account. The date of last activity on this account was November 2008. In her Answer to the SOR, Applicant indicated that she intended to communicate with the collection agency to reach a settlement agreement. In her response to the FORM, she stated that she was still negotiating with the collection agency. This debt is unresolved.⁴

SOR ¶ 1.b – collection account of \$9,849. This is a credit card account. The date of last activity on this account was September 2009. In her Answer to the SOR, Applicant indicated that she sent the collection agency a hardship letter explaining her illness and period of unemployment. In her response to the FORM, she stated that the collection agency was not interested in working with her on the debt and obtained a judgment against her. The judgment was issued on August 25, 2011, in the amount of \$9,849, plus \$128 in court costs, and accrues interest at a yearly rate of 4.25 percent. She indicated that \$128 of her wages was going to be garnished from her weekly paychecks. She submitted a letter from an attorney representing the collection agency that demanded payment of the judgment and indicated that, if payment was not made within ten days, her wages would be garnished. No documents were submitted that show a garnishment has been instituted. This debt is unresolved.⁵

SOR ¶ 1.c – collection account of \$5,642. This is a credit card account. The date of last activity on this account was September 2008. In her Answer to the SOR, Applicant indicated that she negotiated a settlement with the creditor in May 2011 and has been paying \$98 per month under that agreement. She provided documents showing that she has authorized the creditor to automatically debit her account for those monthly payments. The documents also show she made payments of \$98 on June 12, 2011; July 12, 2011; August 12, 2011; and October 12, 2011. She provided sufficient information to establish that this debt is being resolved.⁶

In her interview with an Office of Personnel Management (OPM) investigator on January 1, 2010, Applicant indicated that her husband had a history of methamphetamine use dating back roughly 20 years, but was drug free for a number of years. In January 2009, he locked himself in a room in their home and refused to come out. She suspected he was using drugs again and called 911. Before the police arrived, she banged on the door with a hammer. Her husband opened the door and some pushing occurred between them. When the police arrived, her husband was arrested for

⁴ Items 1, 4, 8, and 10.

⁵ *Id.* In her OPM interview, Applicant indicated that she had a repayment program with the creditor for four months and was paying \$56 per month towards this debt. She provided no proof of those payments. See Item 6 at 10.

⁶ Items 1, 4, 8, and 10.

possession of illegal drugs and she was arrested for criminal damage. The charge against her was apparently dropped after she attended an anger management course and paid fees. Her husband resolved the charge against him by pleading guilty to a reduced charge. At the time of the interview, she indicated that she did not believe he was currently using drugs, but worried he might start again.⁷

During her OPM interview, Applicant stated that she is working to resolve all of her financial problems and intended to satisfy her debts. She indicated that she has always lived within her means and had outstanding credit before her illness. She does not believe that she will have any future financial problems. In her response to interrogatories in May 2011, she submitted a Personal Financial Statement (PFS) that reflected she had a net monthly income of \$2,204 (weekly salary of \$551 times 4), total monthly expenses of \$800, and total monthly debt payments of \$1,293, resulting in a net remainder of \$111. In the PFS, the monthly debt payments did not include payments towards the alleged debts. The PFS also indicated that her husband was not working at that time.⁸

In her Answer to the SOR, Applicant indicated she has worked for defense contractors for the past 32 years. During most of that time, she held a security clearance. In her OPM interview, she described herself as a law-abiding citizen. She has not submitted any reference letters or work performance appraisals. I was unable to evaluate her credibility, demeanor, or character in person because she elected to have her case decided without a hearing.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied

⁷ Items 6 at 10-11, and 9.

⁸ Items 6 at 9.

in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts totaling over \$21,000 that she was unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Four financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In 2006, Applicant had surgery for a brain tumor and thereafter had two other surgeries for blood clots. While recuperating, she was laid off from her job. Her husband began working part time to care for her. Her medical problems and unemployment were conditions beyond her control that caused her financial problems. For AG ¶ 20(b) to fully apply, however, an individual must act responsibly under the circumstances. Since September 2008, Applicant has been employed full-time except for a short period in which she was laid off in May-June 2008. Since returning to work, she has not provided any proof of payments on the debts in SOR ¶ 1.a and 1.b. In her Answer to the SOR, she indicated that she would take step towards resolving those debts, but provided no proof of any meaningful action to settle them. From the documents she presented, it

appears she only started making payments on the debt in SOR ¶ 1.c after she had her OPM interview. Based on these circumstances, I cannot conclude that she has acted in a financially responsible manner since returning to work or that the delinquent debts do not cast doubt on her current reliability, trustworthiness, or good judgment. I find that AG ¶¶ 20(a) and 20(b) are partially applicable, but do not fully mitigate the security concerns arising from her delinquent debts.

Applicant has not presented any proof that she received financial counseling. In May 2001, she entered into an agreement to settle the debt in SOR ¶ 1.c. Since then, she has been making payments under that agreement. AG ¶¶ 20(c) and 20(d) apply to SOR ¶ 1.c, but not to the remaining debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant found herself in a difficult financial situation due to her illness and period of unemployment. During that period, her husband also began working part time to care for her. Despite such mitigation, her financial problems remain a security concern. According to her PFS, she is barely meeting her current financial obligations. At this point, it is unknown whether two of the alleged debts (SOR ¶¶ 1.a and 1.b, totaling \$15,826) will be resolved. In the absence of a realistic plan for resolving those debts, insufficient evidence has been presented to conclude that her financial problems are behind her.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1a – 1b:	Against Applicant
Subparagraph 1c:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge